

CALENDAR

PWR-Up REALTOR® Rally

Date: November 4, 2011
Time: 9:00 a.m. – 11:00 a.m.
Where: Business Expo Center,
Anaheim

Please contact the Pacific West
Association of REALTORS® to sign up!

TRI-CO. SPOTLIGHT "LIVE"

Date: November 17, 2011
Time: 9:00 a.m. – 11:00 a.m.
Where: Diamond Bar Center,
Diamond Bar

Please contact the Tri-Counties
Association of REALTORS® to sign up!

SRCAR BROWN BAG

Date: November 18, 2011
Time: 11:30 a.m. – 1:00 p.m.
Where: SRCAR Grand Hall,
Murrieta

Please contact the Southwest Riverside
County Association of REALTORS® to
sign up!

REMINDER

NEW CARETS Standardized Rules and Regulations, as well as CARETS Data Integrity Standards will be effective on November 1, 2011. Make sure you are operating your real estate business off of the most current set of Rules and Data Integrity Standards.

NEXT MONTH!

Next month our Courtside Newsletter will discuss the new C.A.R. Forms that will become effective on November 1, 2011. Do not miss out on the beneficial information. If you are not currently subscribed to our Courtside Newsletter, please visit our website to sign up for monthly mail delivery.

Courtside Newsletter

Informing local Real Estate Brokers & Association members for over twenty years.

NEW LAWS THAT MAY AFFECT YOUR REAL ESTATE BUSINESS

WHAT THESE NEW LAWS MEAN FOR PRACTITIONERS

BY: CASEY MCINTOSH, PARALEGAL

The current session of the California State Legislature recently passed a number of Bills that will affect REALTORS®, real estate agents, and their clients in numerous ways. As these new laws will come into effect in 2012, it is important to be informed now in order to make implementation as easy as possible. The following are simply a few of the new laws and how they will pertain to real estate practitioners when they become effective.

Senate Bill 510: Branch Offices

This piece of legislature will become effective July 1, 2012 and will amend Section 10164 of the Business and Professions Code as it applies to the management of branch offices. Pursuant to existing law, a real estate broker is required to procure a separate license for each branch office maintained by the broker. SB 510 will authorize an employing broker to appoint a branch manager, pursuant to a written contract, and delegate responsibility to oversee and supervise operations and activities of that branch, as specified in the employment contract. The employing broker will also be required to send a written notice to the Department of Real Estate identifying the appointed manager and, should the broker-manager relationship be changed or terminated, the broker will be required to notify the Commissioner of those changes as well. SB 510 also outlines that the appointed manager must have at least two years of full-time real estate experience in the five years prior to appointment, and must not hold a restricted license or be subject to debarment. The Commissioner is authorized to suspend or

revoke the license of the appointed licensee for failure to properly oversee and supervise operations.

What This Means for Real Estate Practitioners
This Bill will be of interest to employing/designating brokers in that they now must notify the Department of Real Estate of their designations. However, it is also important to note the higher standard to which the appointed branch manager will be held. SB 510 will create accountability that will extend beyond the employing broker and to the manager of the branch. It is anticipated that Regulations will follow to detail the criteria for this statute.

Senate Bill 53: Escrow Transactions

As of now, real estate brokers engaging in certain escrow activities are required to make certain disclosures and recordings regarding those activities. Beginning on July 1, 2012, Business and Professions Code Section 10141.6, *et seq.*, will be amended regarding real estate brokers who, pursuant to the exemption from the Escrow Law contained in Section 17006 of the Financial Code, engage in escrow activities for five or more transactions in a calendar year or whose escrow activities equal or exceed one million dollars in a calendar year. Within 60 days of the completion of the calendar year, those brokers subject to this section will be required to file a report with the Department of Real Estate documenting the number of escrows conducted and the dollar volume escrowed was

during the calendar year in which the threshold was met. Those brokers who fail to submit the required documentation will be assessed per diem penalties that will continue to increase until the Department receives the report. Further, if those penalties are not paid, the Commissioner may suspend or revoke the license of the offending broker.

What This Means for Real Estate Practitioners

SB 53 is important as it applies to brokers who may find themselves reaching the statutory limits outlined in B&P Section 10141.6, *et seq.* It is essential to keep track of any amendments in legislation that may change the way a real estate practitioner conducts business. SB 53 is a bill that goes on to amend other sections of the Business and Professions Code with regards to the Real Estate Law and will thereby interest agents and brokers alike. It can be found in its entirety at www.leginfo.ca.gov.

Senate Bill 837: Changes to Transfer Disclosure Statement

Existing law requires that, "on or before January 1, 2017, a single-family residential property built on or before January 1, 1994, be equipped with water-conserving features..." Such features include low-flow toilets, showerheads, and faucets (pursuant to Civil Code § 1101.3). Beginning January 1, 2012, SB 837 will make amendments to the Transfer Disclosure Statement (TDS) to disclose whether the property is equipped with these water-conserving plumbing features. (CAR will publish a new TDS form in November, 2011 that will contain this disclosure.)

What This Means for Real Estate Practitioners

The amendment of Civil Code Section 1102.6 to include the disclosure of water-conserving features is one more item for real estate practitioners to look out for when assisting their clients with the TDS. Whether filling out the form or reviewing it, it is important to note whether these items are checked, so your client either knows what they need to do to the property in the future (as buyers), or, if they are already installed, what is increasing the value of the home (for sellers).

Senate Bill 4: Changes to Notice of Sale

Current law requires lenders to file Notices of Default in the case of nonjudicial foreclosure prior to enforcing the power of sale as a result of a default on an obligation secured by real property. Further, a Notice of Sale is to be given and recorded prior to exercising the

power of sale. Effective April 1, 2012, SB 4 will now require additional language on the Notice of Sale notifying potential bidders of the risks and liabilities of bidding at the auction, as well as where they can find additional information regarding these risks. The Notice of Sale will also contain language for the property owner regarding how to obtain information about sale dates and postponements. This information is required to be provided by any means that provides continuous access.

What This Means for Real Estate Practitioners.

The changes in the Notice of Sale do not necessarily affect the salesperson, broker or their business directly, but keeping up with the changes will also help you to keep up with current trends in real estate and potentially the market.

These four bills are not the only new legislature that may affect a REALTOR®, real estate agent, or his or her client. As was aforementioned, it is important to keep track of the new laws and changes to existing laws—even those that do not seem pertinent at this exact moment. As an agent or broker, it is essential to be as informed and well-rounded as possible. Keeping up-to-date on the law will better ensure that this is the case.

Got Legal Questions?

We provide top quality ethical and professional legal services in a number of areas. Contact our office today to schedule a consultation.

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EMPLOYER CAN'T FIRE EMPLOYEE FOR FACEBOOK POSTINGS

Real estate professionals are increasingly using social media which raises new situations for potential legal and ethical exposure for violating the NAR Code of Ethics, CAR and local MLS rules, as well as federal and state laws (for example, defamation, slander, breach of fiduciary duty or confidentiality, trademark or copyright infringement, and wrongful termination).

A recent decision by the National Labor Relations Board (NLRB) found an employer had wrongfully terminated several employees for posting derogatory material on Facebook. The NLRB ruled that employees have a right to use social media to comment on working conditions. In the first ruling of its kind, a nonprofit organization was required to reinstate and pay back wages to five employees who were fired for Facebook postings criticizing a co-worker. The comments did not include NLRB protected discussion of terms and conditions of employment, but instead were "trash talk" including profanity. The NLRB found the postings violated the employer's policy on bullying and harassment. This decision expanded NLRB law and is expected to be appealed.

Social media policies should be carefully drafted so as not to prohibit employees' right to discuss wages and other terms and conditions of employment or communicate by posting pictures." Broad policies restricting how employees talk about company business on personal blogs, posting photos or comments about the company that could be "inappropriate" may be unlawful.

Employers must remember that federal labor law gives employees (union or non-union) the right to engage in protected "concerted activity" – defined as two or more employees acting together to address a collective employee concern about the terms and conditions of employment. Before disciplining or terminating an employee for social media activity, employers should consult with legal counsel to review their enforceability of their policies and determine whether the employee's conduct is protected concerted activity.

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